

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, April 23, 2003

IMPLEMENTATION OF ASSEMBLY BILL 1506 (WESSON)
GRANT ADJUSTMENTS FOR LABOR COMPLIANCE PROGRAMS

PURPOSE OF REPORT

To present proposed regulations to provide a per pupil grant increase to accommodate the State's share of the increased costs of a new construction or modernization project due to the initiation and enforcement of a Labor Compliance Program (LCP).

BACKGROUND

Assembly Bill (AB) 1506, Chapter 868, Statutes of 2002, requires that the State Allocation Board (SAB) increase the per-pupil grant amounts in Education Code Section 17072.10 and 17074.10 to accommodate the State's share of the increased cost of new construction and modernization projects due to the initiation and enforcement of a LCP. The increases must be effective by July 1, 2003.

DESCRIPTION

Labor Compliance Program Costs

A LCP consists of three major activities: initiation, monitoring, and enforcement. Prior to the passage of AB 1506, only a handful of California K-12 public school districts had active LCP's. Most of these were designed by the individual districts and did not necessarily include all of the requirements of AB 1506 or approval by the Department of Industrial Relations. Additionally, most of the districts with LCP's were large, and applied the programs to all construction related contracts in the district, including even routine maintenance work. For this reason, costs applicable to individual projects were not readily available.

The Office of Public School Construction (OPSC), through discussions at the Implementation Committee, requested any available information related to the per project costs of conducting a LCP in a public school district. In response, the OPSC received a limited number of written proposals from third-party providers, as well as, a proposal for the California Community Colleges. This information, though very limited, served as the basis of the proposed per pupil grant adjustments proposed in this regulation.

STAFF COMMENTS

Although the Implementation Committee reached consensus on the proposed regulations, Staff agreed to advise the Board of some concerns expressed at the meetings held on this subject. School district representatives expressed the belief that the actual enforcement of labor code violations could lead to expensive legal and litigation costs, which are not anticipated in the proposal. Additionally, representatives of the Department of Finance pointed out that there is not a clear model of the minimum required to implement and enforce a LCP. Thus, the proposal could be based on the assumption that more work will be done than is actually required, thereby inflating the cost and the amount of the additional per pupil grant.

Staff acknowledges the possible validity of both comments. Given the urgency to adopt regulations by July 1, 2003, and given the very sparse data available at this moment, the Committee and Staff agreed the attached regulations should be presented to the SAB now, and that the amount of the per pupil grant should be revisited in approximately one year. At that time, information based on actual experience in school districts can be used to recommend an increase or a decrease in the additional per pupil grant for future apportionments.

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PROPOSAL

Using the information available, the OPSC developed a sliding scale based on the total cost of a project, less site acquisition, to determine the amount to be added for a LCP. This amount is then divided by the number of pupils in the project to determine the per pupil cost of the LCP. The State share is 50 percent of the resulting amount for new construction projects, and either 60 percent or 80 percent as appropriate for modernization.

The minimum total of the State and District share added to any project is \$16,000. Samples of the adjustments are as follows:

1.6 percent but not less than \$16,000 for any project under \$1 million.
\$39,200 (0.78 percent) for a \$5 million project
\$57,800 (0.57 percent) for a \$10 million project.
\$86,000 (0.43 percent) for a \$20 million project.

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Eligible Projects

A School Facility Program new construction and modernization project is eligible for an increase in the per pupil grant amount for the State's share of the cost of a LCP if both of the following conditions are met:

The project was or will be funded from the proceeds of Proposition 47 or from the Kindergarten-University Public Education Facilities Bond Act of 2004, and
Notice to Proceed for the initial contract for construction of the project was issued on or after April 1, 2003.

Projects apportioned in full prior to the enactment of these proposed regulations, and which are required to have a LCP in place at the time of the fund release request, may receive an additional one time apportionment for the costs associated with the LCP as calculated under these regulations.

RECOMMENDATIONS

1. Approved the additions and amendments to the regulation sections contained on the Attachment.
2. Authorized the OPSC to file the regulations on an emergency basis because Labor Code Section 1771.7 (e) requires the grant increases to be available not later than July 1, 2003.
3. Direct Staff to conduct a review of the per pupil grant increase proposed in these regulations and make recommendations for adjustments, if necessary, at the April 2004 SAB meeting.

ATTACHMENT
Proposed Regulatory Amendments
Implementation of Assembly Bill 1506 (Wesson)
Grant Adjustments for Labor Compliance Programs
State Allocation Board Meeting, April 23, 2003

Amend Regulation Section 1859.2

Section 1859.2. Definitions.

"Labor Compliance Program (LCP)" shall be as described in subdivision (b) of Labor Code Section 1771.5 and approved by the Department of Industrial Relations.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17280, and 56026, Education Code. Section 53311, Government Code and Section 1771.5, Labor Code.

Amend Regulation Section 1859.71

Section 1859.71. Adjustments to the New Construction Grant.

- (a) The new construction per-unhoused-pupil grant amount, as provided by Education Code Section 17072.10(a), will be adjusted as follows:
- (1) Annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.
- (2) By 50 percent of the following calculation for any project for which the district is required under Labor Code Section 1771.7(a) and (b) to initiate and enforce a LCP:
- (A) Using the chart in (b) of this Section, determine the total amount of funding to be provided for the increased costs of a new construction project due to the initiation and enforcement of a LCP.
- (B) Divide the amount determined in subsection (a)(2)(A) by the total number of pupils in the approved application.
- (b) The increased costs of a new construction or modernization project due to the initiation and enforcement of a LCP shall be calculated on the total project cost, exclusive of site acquisition costs, as follows:

<u>For the first \$1 million or any part thereof, plus</u>	<u>\$16,000</u>
<u>For the next \$1 million or any part thereof, plus</u>	<u>1.6 percent</u>
<u>For the next \$1 million or any part thereof, plus</u>	<u>0.25 percent</u>
<u>For the next \$1 million or any part thereof, plus</u>	<u>0.15 percent</u>
<u>For the next \$2 million or any part thereof, plus</u>	<u>0.32 percent</u>
<u>For the next \$2 million or any part thereof, plus</u>	<u>0.31 percent</u>
<u>For the next \$5 million or any part thereof, plus</u>	<u>0.46 percent</u>
<u>For the next \$5 million or any part thereof, plus</u>	<u>0.44 percent</u>
<u>For the next \$30 million or any part thereof, plus</u>	<u>.042 percent</u>
<u>For any remaining portion</u>	<u>0.4 percent</u>

For any changes or additions to the regulations adopted by the Board in 1999, those changes shall be adjusted in accordance with this Section at the time the regulations are adopted.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.10, Education Code.

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Amend Regulation Section 1859.78

Section 1859.78. Adjustments to the Modernization Grant.

The modernization per-unhoused-pupil grant amount, as provided by Education Code Section 17074.10(a), will be adjusted as follows:

- (a) Annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.30 and the first adjustment shall be January, 1999.
- (b) By the following calculation, less the district matching share required in Section 1859.79, for any project for which the district is required under Labor Code Section 1771.7(a) and (b) to initiate and enforce a LCP:
 - (1) Using the chart in Section 1859.71(b), determine the total amount of funding to be provided for the increased costs of a modernization project due to the initiation and enforcement of a LCP.
 - (2) Divide the amount determined in subsection (b)(1) by the total amount of pupils in the approved application.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17074.10, Education Code

Amend Regulation Section 1859.79.2

Section 1859.79.2. Use of Modernization Grant Funds.

The Modernization Grant plus any other funds provided by these Regulations shall be expended as set forth in Education Code Sections 17074.25 and 17070.15 (f) and may also be utilized for other purposes as set forth in Education Code Section 100420 (c). Modernization funding may also be used for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a LCP. Modernization funding, with the exception of savings, is limited to expenditure on the specific site where the modernization grant eligibility was generated. The grant may not be used for the following:

- (a) New building area with the exception of the following:
 - (1) Replacement building area of like kind. Additional classrooms constructed within the replacement area will reduce the new construction baseline eligibility for the district.
 - (2) Building area required by the federal American with Disabilities Act (ADA) or by the Division of the State Architect's (DSA) handicapped access requirements.
- (b) New site development items with the exception of:
 - (1) Replacement, repair or additions to existing site development.
 - (2) Site development items required by the federal ADA Act or by the DSA's handicapped access requirements.
- (c) the evaluation and removal of hazardous or solid waste and/or hazardous substances when the Department of Toxic Substance Control has determined that the site contains dangerous levels of a hazardous substance, hazardous waste, or both that exceed ten percent of the combined adjusted grant and the district matching share for the project.
- (d) Leased facilities not owned by another district or a county superintendent.

Modernization Grant funds shall be expended as set forth in Education Code Section 17074.25 and may also be utilized for other purposes as set forth in Education Code Section 100420(c).

Modernization Grant funds may be used on any school facilities on the site. If the classroom facilities on the site include areas that are currently ineligible for modernization, it will not disqualify those facilities from future modernization funding.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.15, 17074.25 and 100420(c), Education Code.